



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/668,116	09/22/2003	Kraig A. Kirschner	70011-00020	7648

58688 7590 01/04/2010  
CONNOLLY BOVE LODGE & HUTZ LLP  
P.O. BOX 2207  
WILMINGTON, DE 19899

EXAMINER
----------

LE, TAN

ART UNIT	PAPER NUMBER
----------	--------------

3632

MAIL DATE	DELIVERY MODE
-----------	---------------

01/04/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

1 RECORD OF ORAL HEARING  
2  
3 UNITED STATES PATENT AND TRADEMARK OFFICE  
4  
5  
6 BEFORE THE BOARD OF PATENT APPEALS  
7 AND INTERFERENCES  
8  
9

10 Ex parte KRAIG A. KIRSCHNER  
11  
12

13 Appeal 2009-005744  
14 Application 10/668,116  
15 Technology Center 3600  
16  
17

18 Oral Hearing Held: December 3, 2009  
19  
20

21 Before JENNIFER D. BAHR, STEFAN STAICOVICI, and FRED A.  
22 SILVERBERG, *Administrative Patent Judges*.  
23  
24

25 ON BEHALF OF THE APPELLANT:  
26

27 JOHN D. MCCONAGHY, ESQ.  
28 Connolly, Bove, Lodge & Hutz, LLP  
29 333 South Grand Avenue, Suite 2300  
30 Los Angeles, CA 90071-1504  
31  
32  
33

34 The above-entitled matter came on for hearing on Thursday, December 3,  
35 2009, commencing at 9:23 a.m., at the U.S. Patent and Trademark Office,  
36 600 Dulany Street, Alexandria, Virginia, before Jan Jablonsky, Notary  
37 Public.

PROCEEDINGS

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

JUDGE BAHR: Good morning, Mr. McConaghy.

MR. MCCONAGHY: Good morning -- get my stuff out here.

JUDGE BAHR: This is docket number 2009-005744, and it's a riser assembly, pipe clamp, basically, right? Not exactly, right?

MR. MCCONAGHY: Wait a minute, wait a minute.

Well, thank you. I would like to first just discuss the invention a bit in view of the prior art. The problem is that I've got this client that is in the sprinkler -- building sprinkler business, and sometime back they have approved the use of plastics in certain applications, CPVC. And CPVC's been a problem, because it isn't a pipe of the metal ilk, and so they have distortions, they have creep, breaks, et cetera. And the inventor figured out what to do about this, and it was to create a uniform compression around the pipe, which then was within the parameters of the physics of the materials and whatnot and would then be appropriate.

So we have -- in our Claim 8 we have a recitation of the hemicylindrical section. The -- it defines a diameter. It's smaller than the pipe. The fitting is smaller than the pipe, and it has this less than 5 percent. Also, the straight sections are in juxtaposition. So we have defined a very specific device.

First, to just comment on Figure 1, which is a pipe clamp, basically.

JUDGE SILVERBERG: Excuse me.

MR. MCCONAGHY: Yes.

JUDGE SILVERBERG: Could you enlighten us what is hemicylindrical and what that means?

1 MR. MCCONAGHY: Half of a cylinder.

2 JUDGE SILVERBERG: What's the difference between that and  
3 semicylindrical?

4 MR. MCCONAGHY: Semicylindrical is it's not -- it doesn't -- it's not  
5 half. It doesn't have to be half. Semi, I mean, is probably a more general  
6 term, but it's not -- hemicylindrical, it's like hemisphere, et cetera. And  
7 it's -- and we define it that way in the specification, paragraph 19, and also  
8 paragraph 16.

9 The pipe clamp is something that you put around a pipe, and you  
10 crank it down till you feel like you've put enough compression on that pipe,  
11 and that pipe clamp is never intended to fully come together with the straight  
12 portions, mating in juxtaposition on either side. That's the big problem, and  
13 that has been the big problem, and it's a big problem in terms of longevity of  
14 the system, of the pipe itself, when it's a PV -- or a CPVC, because you're  
15 getting distortions. You're not getting this compression that the inventor has  
16 come up with that is uniform about the pipe.

17 So what have they done? By having the diameter of this  
18 hemicylindrical section being smaller than the pipe, but no more than 5  
19 percent, and then drawing it down to where it is intended to be fully clamped  
20 with the pieces together, the -- clamping straight sections together, it takes  
21 the discretion on how hard to crank this thing down. It takes -- it creates this  
22 uniform compression about the pipe.

23 So it looks a lot like a pipe clamp, but it's very specifically not a pipe  
24 clamp, and those very -- those specifics are in the claim, as I mentioned.

25 So what does Brown teach us? I don't know what Brown teaches us.  
26 There's no real information in there, but you look at the drawing and it looks

1 like a pipe clamp. Actually the drawing looks like the draftsman understood  
2 a pipe clamp, but didn't understand how one works, so he cranked it down to  
3 where the two sides are brought together. But I -- it just --

4 JUDGE BAHR: Do you think that was a misunderstanding on the  
5 draftsman's part, or do you think it was an intentional showing of exactly  
6 what your -- you cited here in the claim.

7 MR. MCCONAGHY: I don't think it matters. I don't think it matters  
8 what Brown shows, but that's -- happens to be my view of it.

9 JUDGE BAHR: It doesn't matter what Brown shows?

10 MR. MCCONAGHY: No, because Brown and Rahe together don't  
11 create the device. And Brown doesn't talk anything about -- and the  
12 Examiner admits that the constriction is not in there, in Brown. So  
13 I'm -- you know, we can talk about Brown, but I don't know what Brown  
14 stands for. But Rahe is a clamp which is more like the pipe clamp. It  
15 clamps in one direction. It happens to be for a completely different type of  
16 device, et cetera, which I think excludes it from appropriate association with  
17 Brown, but it just doesn't do it. It clamps in one direction. It doesn't create  
18 this uniform constriction around the pipe, which is -- the invention is  
19 specifically set up to do and the claims specifically call for in those  
20 elements.

21 And maybe I should be a little clearer about that, but there is -- they  
22 cut out a piece so it isn't hemicylindrical and then they crank it down with a  
23 fastener, and that cranks it down in one direction, so you're not  
24 getting -- you're able to set it in there so that you can then constrict it in  
25 there, and you crank it down. So that, to me, is effectively a pipe clamp.

1           So I think there's two principal failings in the rejection. The  
2 references don't make the invention --, specifically, as I just mentioned,  
3 Rahe doesn't generate the constriction. They have a range of tolerance or  
4 interference fit if you tighten the fastener all the way down, but that, again,  
5 as I'm saying, is not -- does not create this uniform constriction.

6           JUDGE SILVERBERG: Is that in the claim, sir? May I ask if that's  
7 in the claim?

8           MR. MCCONAGHY: Yeah, that's --

9           JUDGE SILVERBERG: The words of "uniform constriction going  
10 around the" --

11          MR. MCCONAGHY: No, absolutely. I'm unfortunately an old  
12 patent attorney, and functional language used to be frowned upon. But I  
13 have the hemicylindrical section. It defines a diameter, and the diameter is  
14 in a range which is smaller than the pipe and no greater than 5 percent, and  
15 the straight sections are brought together in juxtaposition. So I define the  
16 physics of it, the physical structure of -- and that's what's missing out of  
17 Rahe.

18          So the Examiner gave a conclusory statement about the invention  
19 which I think is in opposition to *KSR* by just ignoring the arguments about  
20 the Rahe device. I see a very distinct difference, which has resulted in -- and  
21 my client has found that this is a far better device for taking a pipe which is  
22 vertically oriented full of water so it needs a lot of holding, and for a plastic  
23 pipe, and for finding that they can make this work, that they then can install  
24 it. It doesn't break. It doesn't ultimately creep to the point of destruction,  
25 and it is a specific structure which creates this constriction that the Examiner  
26 has not found, in the combination or otherwise.

1 JUDGE SILVERBERG: Is there anything else you'd like to add?

2 MR. MCCONAGHY: No.

3 JUDGE STAICOVICI: I have a question.

4 MR. MCCONAGHY: Yes.

5 JUDGE STAICOVICI: It goes back to -- I understand Brown is the  
6 primary reference.

7 MR. MCCONAGHY: Correct.

8 JUDGE STAICOVICI: And the Examiner finds that Brown teaches a  
9 hemicylindrical --

10 MR. MCCONAGHY: No.

11 JUDGE STAICOVICI: And do you know if -- does so --

12 MR. MCCONAGHY: No, he says substantially. And then he admits  
13 that it doesn't have the properties that he tries to add Rahe for, but he just  
14 says it's like it's substantially, and substantially doesn't cut it. Yes, it looks a  
15 lot like it, I agree.

16 JUDGE STAICOVICI: But hemicylindrical would have to be a  
17 hundred percent of half of a cylinder, correct?

18 MR. MCCONAGHY: Yes.

19 JUDGE STAICOVICI: Didn't your invention have a certain radius at  
20 the edges?

21 MR. MCCONAGHY: Yes, paragraph 16 talked about that.

22 JUDGE STAICOVICI: So that's also substantially hemicylindrical,  
23 then -- you would have those radiuses -- not --

24 MR. MCCONAGHY: Well, I defined -- it's true. I defined  
25 substantially in the application in paragraph 16 as to having -- there's another

1 change too. It has the little relief at the edges, at the -- on the ends there's a  
2 bit of relief, shown in Figure 3.

3 JUDGE STAICOVICI: Right.

4 MR. MCCONAGHY: And it also -- I mentioned it has -- because  
5 you've got to make the thing. It's got a bit of a bend at the intersection  
6 between the hemicylindrical section and the straight sections. But if you  
7 draw a line across the straight sections, you have a hemicylindrical shape  
8 with a diameter defined. And he's talking about something that is  
9 substantially, because it's like a pipe clamp.

10 JUDGE BAHR: Or does the Examiner mean substantially in the same  
11 way you've used the word "substantially," that it has that little radius at that  
12 junction from where it becomes cylindrical in shape to the flat face?

13 MR. MCCONAGHY: I propose to you that he does not mean that,  
14 never pointed it out. He was talking about --

15 JUDGE BAHR: Because your claims at one point had substantially  
16 hemicylindrical.

17 MR. MCCONAGHY: It did, absolutely. And I defined that -- what I  
18 meant by "substantially," and he didn't accept that as a definition, and that  
19 definition is different than what he's using, what the prior art has. So he's  
20 glossing over "substantially." He's not getting it from Brown, for sure, and  
21 then Rahe is -- very specifically teaches against hemicylindrical. They  
22 have -- and I put that in the Brief, a view of it in the Brief. They specifically  
23 cut a piece out of that so that it isn't. And you know, they're telling you,  
24 "Here's how you clamp this pipe," And you take a slice out of one side of it  
25 and then crank it down together, so it's pushing in one direction. It's not  
26 creating the constriction.



1           So I fully appreciate that this all looks very, very similar, but we were  
2 motivated to file this thing because this is a substantial difference. The  
3 difference is that you're getting this constriction, and the pipe, the pipe is  
4 able to -- effectively the pipe is the one which is being uniformly strained in  
5 a way that allows it to operate as distinguishing from the old pipe clamps,  
6 where it's not the pipe that's strained, it's principally the pipe clamp that is  
7 clamped down, and then as it's tightened it clamps -- it bends around the  
8 rigid pipe.

9           JUDGE STAICOVICI: So basically the definition of hemicylindrical  
10 includes this constriction giving a 5 percent difference in the diameters?

11          MR. MCCONAGHY: The hemicylindrical is -- defines a diameter,  
12 and then that diameter is --

13          JUDGE STAICOVICI: So that's 5 percent difference?

14          MR. MCCONAGHY: Yeah. Then the diameter is defined in terms of  
15 the range.

16          JUDGE STAICOVICI: Right.

17          MR. MCCONAGHY: Okay?

18          JUDGE BAHR: In paragraph 19 of your specification, the last two  
19 sentences, there's a sentence that reads, "Such sections may include  
20 additional plates or washers about the through holes as part of the straight  
21 sections."

22          MR. MCCONAGHY: Mm-hmm.

23          JUDGE BAHR: Does that contemplate an embodiment where the flat  
24 plates themselves are not, in fact, in contact with one another, but there is a  
25 gap between them that is filled by either washers or plates?

26          MR. MCCONAGHY: Sure didn't in my mind.

1 JUDGE BAHR: What are you trying to say there, then?

2 MR. MCCONAGHY: That the -- I'm sorry.

3 JUDGE BAHR: It's on page 5 of the specification.

4 MR. MCCONAGHY: Yeah, I just -- if I could find the stupid  
5 specification it would help. Well, I know what I was talking about. I was  
6 trying to talk about there not being -- there being other possible fasteners and  
7 ways of fastening things. Well, I'm -- I had this problems on the plane, too.  
8 I don't know where the -- I ought to write longer specifications. Here we go.

9 Oh, by the way, "pump" is wrong in there, too, in the next to last  
10 sentence. "Thus the riser clamp 12 as applied to a riser pipe will not crush  
11 the branchable pipe." Is that it? "And further will not gouge the pipe at  
12 sharp edge"?

13 JUDGE BAHR: Yes, the sentence right before that.

14 MR. MCCONAGHY: Oh, okay.

15 JUDGE BAHR: "This inclusion of additional plates or washers about  
16 the through holes as part of the straight sections to define that diameter size  
17 relationship" --

18 MR. MCCONAGHY: "Specific size relationship between the  
19 inside" -- I would say that that would be the prospect of a more complicated  
20 structure to achieve the same result, but it has to have that result, has to have  
21 that ultimate -- the pipe has to see what amounts to that hemicylindrical  
22 section, or it doesn't cause uniform constriction.

23 JUDGE BAHR: Somehow these additional plates or washers help  
24 define this specific size relationship, which if they were on the outside of the  
25 plates --

26 MR. MCCONAGHY: Yeah, they would be part of the --

1 JUDGE BAHR: -- opposite the straight sections --

2 MR. MCCONAGHY: Yeah.

3 JUDGE BAHR: -- it appears they would not define that relationship.

4 They would have to be --

5 MR. MCCONAGHY: Yeah.

6 JUDGE BAHR: -- between those sections.

7 MR. MCCONAGHY: I think you're right. I think you're right. So  
8 it's -- again, it's the focus on the definition or on the creation of that  
9 relationship, that hemicylindrical relationship, where you have defined a  
10 diameter, as it says in the claim, and that diameter has specific size range,  
11 and it's not a pipe clamp, nor, you know, any of this is a pipe clamp. So  
12 it's -- I agree, it's -- look at it, and the Examiner has said, "Well, it's  
13 substantially semi -- hemicylindrical." Okay, yeah, it looks like that. But  
14 it's creating a result in the pipe, in this plastic pipe, which is different than  
15 the way pipe clamps work, and distinctly compresses this plastic pipe, where  
16 pipe clamps are -- have always assumed a rigid structure, and that they're  
17 pulled around, they're tightened around to the point they then hold simply  
18 through that compression. And again, that compression is principally, just  
19 like the Rahe device, it's principally two directions or one direction, a  
20 compression through the tension on the bolts on either side of it.

21 JUDGE BAHR: I think we understand your position. I don't have  
22 any other questions.

23 MR. MCCONAGHY: Thank you very much.

24 (Whereupon, at 9:45 a.m., the proceedings were concluded.)